



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
Washington, D. C. 20226

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NON-ALCOHOLIC MALT BEVERAGE MARKETING

Proprietors of Distilled Spirits Plants, Bonded Wine Cellars, Taxpaid Wine Bottling Houses, Brewers, Importers, Wholesale Malt Beverage Dealers, Wholesale Liquor Dealers, and Others Concerned:

Purpose. This circular is to advise members of the regulated industries of the Bureau of Alcohol, Tobacco and Firearms (ATF) position concerning the marketing of non-alcoholic malt beverages.

Background. The Federal Alcohol Administration Act (FAA Act) defines malt beverages under 27 U.S.C. section 211 (a)(7) and the regulations issued thereunder, without any reference to a minimum level of alcohol content. Thus, importers and wholesalers of all malt beverages, including non-alcoholic malt beverages, are subject to the permit requirements of the FAA Act pursuant to the provisions of 27 U.S.C. sections 203 and 204. When properly labeled, malt beverages of less than one-half of one percent of alcohol may be designated as "cereal beverages," "near beer," or "non-alcoholic malt beverages." See 27 C.F.R. §§ 7.24(d), 7.26(c). Moreover, where State law imposes similar requirements, non-alcoholic malt beverages are subject to the Unfair Competition and Unlawful Practices provisions of the FAA Act. See 27 U.S.C. §205. Regulations at 27 C.F.R. Parts 6, 8, 10, and 11 define the parameters of these provisions.

Discussion. Recently ATF received an inquiry concerning the marketing of non-alcoholic malt beverages by industry members. Specifically, industry members requested ATF's position on the giving of cash payments to retailers for the purpose of selling their non-alcoholic malt beverages. Generally, if these cash payments induce retailers to purchase an industry member's non-alcoholic malt beverages products to the exclusion of a competitor's products

and if State law also prohibits these payments, such a practice may well violate the FAA Act. Moreover, even if a particular State law does not include non-alcoholic malt beverages within the definition of a malt beverage, ATF will nevertheless closely scrutinize promotions of non-alcoholic malt beverages to determine the extent to which they may be tied in with the sale of other alcoholic products that fall within the provisions of the FAA Act.

Finally, ATF will investigate marketing strategies that point to the existence of unfair trade practices under the FAA Act and will take the appropriate action according to the merits of each case.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Room 8000, Washington, DC 20226.

Stephen E. Higgins
Director

Department of The Treasury
Bureau of Alcohol, Tobacco and Firearms
Wine and Beer Branch, Rm 5000
Washington, DC, 20226

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